

1 Jury Selection

2 Williams?

3 PROSPECTIVE JUROR NO SEVEN: Yes, I guess
4 so.

5 THE CLERK: Take seat number eight, Margie
6 Evans.

7 Take seat number nine, David Oppenheim.

8 Take seat ten, Ramon Nazpot.

9 Take seat eleven, Cynthia Barlow.

10 Take seat twelve, Shirley Fields.

11 Take seat thirteen, Sandra Lynch Bradford.

12 (Whereupon, an off-the-record discussion was
13 had at the bench between all counsel, prospective
14 juror and the Court.)

15 THE CLERK: Take seat thirteen, James Keating.

16 Take seat fourteen, Anna Ippolito.

17 THE COURT: I presume since you have all taken
18 the seat, you can be fair and impartial jurors
19 after having said everything I have said and the
20 lawyers, right?

21 PROSPECTIVE JUROR NO. 13: Just one question.
22 Could you repeat the name of the detectives that
23 are going to be testifying? One of them sounded
24 familiar to me. I am not sure.

25 THE COURT: Hernandez. Callery. Fiorica.

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2 Eversman, Nieves and Garcia.

3 PROSPECTIVE JUROR NO. 13: I worked with the
4 name of Fiorica who I know his brother is a
5 policeman.

6 THE COURT: Fiorica is in the ballistics
7 squad.

8 PROSPECTIVE JUROR NO. 13: The fellow I work
9 with, I met his brother eight, ten years ago. I
10 don't know if it's the same.

11 THE COURT: Well, Fiorica is with ballistics.
12 He will testify to the caliber of the bullets that
13 were turned over to him by either the medical
14 examiner or crime scene.

15 MR. VECCHIONE: Essentially and that they came
16 from the same gun.

17 THE COURT: Would that affect you in any way?

18 PROSPECTIVE JUROR NO. 13: No, sir.

19 THE COURT: So all of you can be fair jurors,
20 treat and give the defendant a fair trial and the
21 people a fair trial and decide this case solely on
22 the credible evidence that you find during the
23 course of the trial and applying it to the law that
24 I give you; you can all do that?

25 Now, you understand that this defendant, as

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he sits here, is presumed to be not guilty. You understand that? And that presumption remains with him throughout the trial. And it sticks unless you are satisfied beyond a reasonable doubt that the presumption has been overcome by the credible evidence. Now, the burden of the proof is on the District Attorney and it never shifts. The District Attorney has to present evidence to satisfy you beyond a reasonable doubt. The defendant having said "not guilty" has no further burden. That's his story. He told his story right up front and he has no further obligation. He doesn't have to say anything, his lawyer doesn't have to say anything. Is that clear? Anybody have any problem with that? Now, as I mentioned to you earlier, after the case is all over, you will be called upon to deliberate and determine whether the People have proven beyond a reasonable doubt the elements of the crimes charged. You see, you are going to hear a lot of material during this case. Most of it is given to you to help you evaluate the credibility of witnesses. The People must satisfy you beyond a reasonable doubt of the elements of each crime. They don't have to prove everything

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beyond a reasonable doubt, but each crime has certain elements. Murder, for example, has three elements. They have to prove all three beyond a reasonable doubt. You can't say they proved two and it doesn't matter about the third. You have to have all three. The robbery has elements. They must prove each and every element beyond a reasonable doubt. Is that clear?

Now, I am going to recess now for lunch, then I will ask questions after lunch. Please be back at 2:00 p.m. When I say for you 2:00 p.m., I am going to have all the lawyers here by 2:15, because by the time all of you get up here and the fantastic elevator service we have, it may take you five or ten minutes longer, so try to get up in the hallway. Don't come in here. Those of you in the box remember your seat number and wait outside the door on my right. That one. All the rest of you come back here. Don't go downstairs. Come back here at 2 o'clock and wait by that doorway. All right? I will see you all then. Have a pleasant lunch.

(Whereupon, the prospective jurors in the box, sworn jurors and the panel of prospective jurors

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2 exited the courtroom.)

3 (Whereupon, the following transpired outside
4 the presence and hearing of the jurors.)

5 THE COURT: All right, go back downstairs and
6 tell them you want to be excused.

7 THE CLERK: What is your name?

8 A JUROR: Helen Williams.

9 THE COURT: 2 o'clock, Central Jury.

10 MR. HARRISON: Your Honor --

11 THE COURT: Wait until she leaves.

12 Yes, Mr. Harrison?

13 MR. HARRISON: I have a series of complaint
14 followups where names are redacted.

15 THE COURT: Before the jury is selected, you
16 will get all the DD-5's or complaint followups
17 without the redacted names.

18 MR. HARRISON: I don't -- if I may, Your
19 Honor, I don't have a problem with the address. To
20 me, that's inconsequential, as long as I have their
21 names. I understand the circumstances.

22 THE COURT: You are going to have their names
23 right after lunch or shortly thereafter.

24 MR. VECCHIONE: Correct.

25 MR. HARRISON: Fine enough. As long as I get

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2 it before before the People open.

3 THE COURT: You know you have a bunch of pros
4 here. They know their obligations.

5 MR. VECCHIONE: I just wanted to remind the
6 Court, I know I mentioned it to you before, to be
7 able to go at 3 o'clock with Judge Keating.

8 THE COURT: I know. We are doing well.

9 MR. HARRISON: I know. It's almost
10 lunchtime. Can he have a visit?

11 THE COURT: Let him say hello to his
12 mother.

13 (Luncheon recess.)

14 (After the luncheon recess.)

15 (Jury selection continued, not recorded.)

16 (Whereupon, the following transpired outside the
17 presence and hearing of the panel of prospective
18 jurors.)

19 THE CLERK: Counsels, we have five sworn
20 jurors. The People have exhausted three
21 challenges, the defense five challenges. As
22 to the entire panel, any challenges for cause,
23 People?

24 MR. VECCHIONE: No challenges.

25 THE COURT: Cause, defense?

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2 MR. HARRISON: No.

3 THE CLERK: Peremptorily? Peremptorily, first
4 seven, People?

5 MR. VECCHIONE: Number four, Mr. Young.
6 Number five, Miss Axelrod.

7 That's it.

8 THE CLERK: Peremptorily, defense?

9 MR. HARRISON: Your Honor, may I just go off
10 the record for one minute?

11 THE COURT: Sure.

12 (Discussion held off the record.)

13 MR. HARRISON: I am going to challenge number
14 one, number two.

15 THE COURT: Obviously, we are not going to get
16 a jury.

17 MR. HARRISON: Number three is acceptable to
18 the defense and number six is acceptable to the
19 defense.

20 THE CLERK: And number seven?

21 MR. HARRISON: Oh, seven, I am challenging
22 seven.

23 THE CLERK: Mr. Nappoli?

24 MR. HARRISON: That's correct.

25 THE CLERK: That makes juror number six

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2 Elizabeth Knafo, juror number seven, Arthur
3 Warshowsky.

4 As to the next five jurors, peremptorily,
5 People?

6 MR. VECCHIONE: Just give me one second.

7 THE CLERK: That's up to and including Cynthia
8 Barlow.

9 MR. VECCHIONE: Miss Scott.

10 THE CLERK: Miss Scott, number ten.

11 MR. VECCHIONE: And Fields, number 12. The
12 rest are acceptable.

13 THE CLERK: Peremptorily, defense?

14 MR. HARRISON: Number nine, Mr. Oppenheim.

15 May I have one minute?

16 THE COURT: Sure.

17 (Short pause in the proceedings.)

18 MR. HARRISON: Eight, I am not
19 challenging. Eight is acceptable and eleven is
20 acceptable to the defense.

21 THE CLERK: That makes Theresa Gablowsky juror
22 number eight and Cynthia Barlow number nine.

23 As to the remaining two jurors, peremptorily,
24 People?

25 MR. VECCHIONE: Thirteen and fourteen?

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2 THE CLERK: Right.

3 MR. VECCHIONE: Acceptable.

4 THE CLERK: Defense?

5 MR. HARRISON: I am challenging both.

6 THE CLERK: Okay.

7 THE COURT: We have nine jurors.

8 Do you want him to continue or would you
9 rather do it yourself tomorrow?

10 MR. VECCHIONE: I'd rather do it myself. Not
11 any reflexion on Mr. Posner.

12 THE COURT: I am not saying a reflection. I
13 could have asked Stacey to do it. So we got nine
14 jurors. We will have to continue tomorrow and I
15 will explain to the jurors that lawyers have prior
16 committments.

17 MR. VECCHIONE: Thank you.

18 Judge, let me just ask you this: I
19 assume -- I know we will get a jury tomorrow, I
20 expect we will get it in the morning. I will be
21 prepared to open, if necessary, even put on a
22 witness at two if you'd like.

23 THE COURT: I would. Once we open, I want to
24 start the case.

25 THE CLERK: I don't have a large calendar at

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2 all tomorrow.

3 THE COURT: So, 10 o'clock.

4 MR. VECCHIONE: Fine. Very good. Thank you,
5 Judge.

6 (Whereupon, the following transpired in the
7 presence and hearing of the jury panel of
8 prospective jurors in the courtroom.)

9 THE CLERK: The following jurors whose names I
10 call, kindly step out of the jury box, you have
11 been challenged and return to Central Jury.

12 Step out, James Keating Anna Ippolito, David
13 Oppenheim, Ramon Nazpot, Shirley Fields, Anthony
14 Napoly, Umberto Bartolomeo, Maureen Morris, Ronald
15 Young and Rachel Axelrod.

16 THE COURT: Is the remaining jurors
17 satisfactory?

18 MR. VECCHIONE: Yes, Your Honor.

19 MR. HARRISON: Yes.

20 THE CLERK: Jurors, kindly stand and raise
21 your right hand.

22 Do you and each of you solemnly swear or
23 affirm that you will try this action in a just and
24 impartial manner and to the best of your judgment
25 render a verdict in accordance with the law and the

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2 evidence, so help you God?

3 (Jurors respond in the affirmative.)

4 THE COURT: Would you sit in that front row?

5 Mr. Vecchione, is it okay with you if I fill
6 the box so I know who has to be excused?

7 MR. VECCHIONE: Sure, Judge.

8 THE COURT: Can the rest slide over so we can
9 make room for the rest of these four?

10 MR. VECCHIONE: Just give me a second before
11 you do it, Your Honor.

12 (Short pause in the proceedings.)

13 THE CLERK: Once again jurors, when you hear
14 your name called, kindly answer to the call of your
15 name, take your belongings and take the seat that's
16 assigned to you.

17 Take seat number one, Martha Smalls.

18 Martha Smalls?

19 THE JUROR: Here.

20 THE COURT: By taking the seat, you are
21 telling me you are going to be a fair and impartial
22 juror in this case.

23 THE CLERK: Take seat number two, Louis Birro,
24 B-i-r-r-o.

25 THE JUROR: Can I approach?

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2 (Whereupon, a discussion was had off the
3 record at the bench between all counsel and the
4 Court and the prospective juror.)

5 THE COURT: Go back downstairs.

6 (Juror excused.)

7 THE CLERK: Take seat number two, Joan
8 Dziedzic.

9 THE COURT: Can we call you Miss D for short?

10 THE CLERK: Take seat three, Patricia
11 Ramseur.

12 THE JUROR: May I approach the bench?

13 THE COURT: Come on up.

14 (Whereupon, a discussion was had off the
15 record at the bench between all counsel, the Court
16 and the prospective juror.)

17 THE COURT: Go back downstairs.

18 THE CLERK: Take seat three, Desere Dansby.

19 Take seat four, Francis Epstein.

20 (Whereupon, a discussion was had off the
21 record at the bench between all counsel,
22 prospective juror and the Court.)

23 THE CLERK: Take seat number five, Emma Gene.

24 Take seat number six, Lucille Consolmagno.

25 Take seat number seven in the second row, Harriet

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2 Behrens.

3 THE JUROR: May I approach?

4 THE COURT: Sure.

5 (Whereupon, a discussion was had off the
6 record at the bench between the prospective juror,
7 counsel and the Court.)

8 THE CLERK: Take seat number seven, Jack Woo.

9 THE JUROR: May I approach?

10 THE COURT: Sure.

11 (Whereupon, a discussion was had off the
12 record at the bench between all counsel, the Court
13 and the prospective juror.)

14 THE COURT: Go back downstairs.

15 THE CLERK: Take seat number seven in the
16 second row, John Gomez.

17 Take seat number eight, Thomas Ponterella.

18 Take seat number nine, Peter Igneri.

19 Take seat ten, Annami Joe Young.

20 Take seat eleven, Anne Saverese.

21 Take seat twelve, Mary Aroyo.

22 Take seat thirteen, Gloria Arist-Neequaye.

23 Take seat fourteen, Allison Antino.

24 THE COURT: Ladies and gentlemen, we are going
25 to recess now. One of our lawyers had a prior

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2 commitment and I promised I would let him go at
3 this time, but I wanted to get this case under way
4 so that we at least -- we have more than half a
5 jury picked, so that we will finish picking the
6 jury tomorrow morning at 10:00 a.m. sharp. Please
7 be here promptly at ten. If you have to get here
8 by 6 o'clock in the morning to get on the elevator,
9 get here at six. Please be here at 10 o'clock.
10 And if there is a big line at the elevator when you
11 get there, go over to one of the court officers,
12 tell them you are a juror in Judge Egitto's part
13 and that I want you to be brought up right away.
14 But don't wait on the big line. Get here as soon
15 as you can. And those of you that were not picked,
16 wait outside at 10 o'clock tomorrow morning, okay,
17 those of you that are on this jury panel but have
18 not been selected yet, and same goes for you, when
19 you get here at 10 o'clock tomorrow morning, wait
20 right outside that door and then we will start
21 promptly at ten, I hope. I will see you all
22 tomorrow morning. Have a pleasant evening. Not
23 you, not the sworn jurors yet.

24 (Whereupon, the panel of prospective jurors
25 exited the courtroom.)

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2 THE COURT: Those of you that are sworn, we
3 still have not been assigned your jury room, but we
4 are guaranteed to have one tomorrow morning. In
5 the meantime, when you get here tomorrow morning at
6 10 o'clock, go down the hall and wait for my court
7 officer, because by that time he should have a jury
8 room and he will take you down to your jury room.

9 MR. VECCHIONE: Judge, I am sorry, I didn't
10 mean to interrupt.

11 THE COURT: A little before ten, okay? Get
12 here.

13 THE COURT OFFICER: Come up to the floor, on
14 the fourth floor, but at the end of the corridor.
15 Don't mix with these other people, okay?

16 MR. VECCHIONE: Just mention about speaking to
17 the jurors.

18 THE COURT: By the way, if you see the
19 lawyers, they are not going to talk to you. Those
20 are my orders. They are not allowed to talk. I
21 don't want someone coming to me later and they'll
22 say they saw a lawyer talking to a juror. Then I
23 have a problem. So don't hold it against them,
24 hold it against me. I will see you all tomorrow
25 morning. Have a pleasant evening.

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2 (Whereupon, the sworn jurors exited the
3 courtroom.)

4 THE COURT: Now, will you bring in all your
5 Rosario material first thing in the morning?

6 MR. VECCHIONE: Yes, Judge.

7 THE COURT: Even though we haven't got a full
8 jury, would you please give it to him so he can at
9 least look at it tomorrow morning before we open
10 and we will start promptly at ten, so I know you
11 will try to be here, but sometimes you get delayed
12 by witnesses.

13 MR. VECCHIONE: We will be here at ten.

14 THE COURT: I want to get this jury selected.

15 THE CLERK: Number five, Superior Court
16 Information 8907 of '90, Jabbar Collins, it's also
17 adjourned till tomorrow.

18 MR. HARRISON: Your Honor, off the record.

19 (Whereupon, a discussion was had off the
20 record at the bench between all counsel and the
21 Court.)

22 (Whereupon, the proceedings were adjourned to
23 Tuesday, March 7, 1995, at 10:00 a.m.)

24 (Continued on the next page.)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM : PART 39
THE PEOPLE OF THE STATE OF NEW YORK
-against-
JABBAR COLLINS
Defendant.

Indictment No. 2884/94
8907/94
March 7, 1995

B e f o r e :
HONORABLE FRANCIS X. EGITTO,
Justice, and a jury.
(Appearances same as previously noted.)

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THE CLERK: Case on trial.
Case on trial continues.
THE COURT: You wanted to put something on the
record before we start?
MR. VECCHIONE: Yes, I do, Judge.
THE COURT: Mr. Harrison, can you pay
attention for a minute, please?
MR. VECCHIONE: Judge, last night we
interviewed a witness who had given a statement to
the police but for the first time has come to the

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2 realization that he is going to cooperate with the
3 district attorney's office in terms of testimony.
4 He is a witness who has known this defendant for
5 about ten years and our expectation is that he
6 would testify to being present during the course of
7 the session in which this defendant and another
8 individual, who has not been arrested and charged
9 with this crime, planned this robbery and he will
10 relate the facts of that planning session. He,
11 however, will not testify that he participated
12 other than to be an individual who is listening to
13 what was going on during the course of the
14 conversations between this defendant and another
15 individual. And he named him. He says he has
16 known Mr. Collins for about ten years. The police,
17 to make sure that it was the same Jabbar Collins
18 that had been a suspect in this case, in fact
19 showed the same photo array that was the subject of
20 your hearing to this individual and he said, yes,
21 that's Jabbar. They showed him another photo
22 array, he said that's the other guy, whose name is
23 Charles Glover, who lives in the building, 126
24 Graham Avenue. The witness' name is Edwin Oliva
25 and I have his Rosario material ready to be turned

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over to defense counsel. Notice was given of the police arranged identification back when the VDF's, the voluntary disclosure forms, were filed with the Court and with Mr. Harrison. It is my opinion that he would not have been the subject of a Wade hearing since he knew him for ten years and saw him very regularly; in fact, was a friend of his. I intend to elicit the testimony about the planning session, what was said by Mr. Collins and by the other conspirator who was there, Mr. Glover, and I expect that the witness will point out Mr. Collins as being the person who participated in the discussion at that time.

THE COURT: Well, turn over all the Rosario material and Mr. Harrison may want to say something.

MR. HARRISON: I would just wonder whether or not the defense is entitled to a minimum hearing to determine the relationship between the defendant and the person making the allegation.

THE COURT: When Mr. Vecchione decides to call that witness before the jury, I will take that much of the testimony in the absence of the jury.

MR. VECCHIONE: That's fine. That's what I

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2 was going to suggest, if your Honor wishes to do a
3 minimal hearing.

4 THE COURT: Is that all right with you?

5 MR. HARRISON: Yes, that's fine. Of course,
6 it would be fine. If we find they don't really
7 know each other, we will go about it from there.

8 THE COURT: If it comes out differently than
9 Mr. Vecchione suggests, off course, we will go
10 differently.

11 MR. VECCHIONE: One other thing: I am going
12 to turn over now, as the Court has requested that I
13 do, the Rosario material even before the jury has
14 been sworn and I have a receipt that I would like
15 Mr. Harrison to sign, but just for the record, I'd
16 like to say that it is Crime Scene photographs, one
17 through thirty-nine, memo books, three spirals, the
18 medicals of Paul Avery and Abraham Pollack, a death
19 certificate, an autopsy report, the DD-5's
20 regarding the investigation into the death of
21 Mr. Pollack, the DD-5's with respect into the
22 investigation with injuries to Paul Avery, the memo
23 books of police officer Nieves and Garcia, the
24 grand jury of witnesses we intend to call, the
25 audio tapes of Angel Santos, Adrian Diaz, Paul